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Attorneys for Defendants  
NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK and JOE DEELY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN EARL CAMPBELL,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK, JOE DEELY,  
and DOES 1-15, inclusive,

Defendants.

Case No. C05-05434 MJJ (EDL)

**SUPPLEMENTAL DECLARATION OF  
CARA CHING-SENAHA IN SUPPORT  
OF DEFENDANT NATIONAL  
RAILROAD PASSENGER  
CORPORATION'S OPPOSITION TO  
PLAINTIFF'S NOTICE OF MOTION  
AND MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS**

Complaint Filed: 12/30/05  
FAC Filed: 2/23/06  
Trial: 7/23/2007

Original  
Hearing Date: May 8, 2007

Rescheduled  
Hearing Date: May 1, 2007  
Hearing Time: 9:00 a.m.  
Dept.: Courtroom E, 15<sup>th</sup> Floor

Magistrate Judge Elizabeth D. Laporte

**DISCOVERY MATTER**

1 I, Cara Ching-Senaha, declare on the basis of personal knowledge:

2 1. I am an attorney with the law firm of Jackson Lewis LLP, counsel of record for  
3 Defendants NATIONAL RAILROAD PASSENGER CORPORATION dba AMTRAK and JOE  
4 DEELY. I am licensed to practice law in the above-referenced district court. I make the  
5 following statements based on personal knowledge.

6 2. This declaration supplements my earlier declaration, filed April 10, 2007, in  
7 support of Amtrak's opposition to Plaintiff's second motion to compel (regarding interrogatory  
8 responses), which shall also be considered in connection with Amtrak's opposition to Plaintiff's  
9 third motion to compel (regarding Plaintiff's third request for documents).

10 **Plaintiff's Failure to Meet and Confer In Good Faith**

11 3. Before any motion to compel as a result of an alleged failure to provide or  
12 participate in discovery can be filed, the parties must make good faith attempts to resolve the  
13 matter informally. Fed.R.Civ.Proc. 37(B); Local Rule 37-1(a). As part of the good faith  
14 requirement, a party must meet and confer and allow sufficient time for the parties to discuss and  
15 explore informal resolution of their differences before any motion to compel is filed. *Obregon v.*  
16 *Superior Court*, 67 Cal.App.4<sup>th</sup> 424, 428 (1998); Local Rule 37-1(a).

17 4. In this case, Plaintiff's counsel waited more than three weeks after Amtrak served  
18 its responses to contact defense counsel in a so-called effort to "meet and confer." Attached  
19 hereto as Exhibit A is a true and correct copy of Plaintiff's counsel's March 30<sup>th</sup> letter, in which  
20 she demanded that defense counsel respond and supplement Amtrak's responses within three  
21 business days. Plaintiff's demand was per se unreasonable because Amtrak had so little time to  
22 consider Plaintiff's positions, few of which were explained in any detail. *Obregon v. Superior*  
23 *Court*, 67 Cal.App.4<sup>th</sup> 424, 428 (1998).

24 5. The unreasonableness of Plaintiff's counsel's position was compounded by the  
25 fact that Plaintiff's counsel *knew* that defense counsel was working on Defendants' motions for  
26 summary judgment and was fully dedicated to completing the motions for filing on April 3<sup>rd</sup>.

27 **Plaintiff's Requests for Statistical Information**

28 6. In his First Amended Complaint, Plaintiff refers only to his own failed promotion

1 attempts and his discharge. (He falsely alleges that Amtrak has hired nor promoted not one  
2 African-American to Engineer since 1998, an allegation that is demonstrably and undisputedly  
3 false, as Amtrak verified in its response to Plaintiff's First Set of Special Interrogatories.)  
4 Plaintiff does not allege a disparate impact theory of discrimination which must be specifically  
5 pled in the operative complaint. Therefore, disparate impact discovery is neither appropriate nor  
6 relevant in this case.

7 7. Statistical evidence to support a disparate impact claim can only be introduced  
8 through competent, admissible expert testimony.

9 8. *Assuming arguendo* Plaintiff had alleged a disparate impact theory of  
10 discrimination in his First Amended Complaint, the time to designate any statistical experts has  
11 passed. (The parties continued until no later than March 30<sup>th</sup> the date by which the parties must  
12 designate expert witnesses.) Plaintiff has not designated any expert witnesses.

13 9. Moreover, in August 2006, Amtrak produced all applications and related records  
14 that it received in response to each of the jobs/vacancies for which Plaintiff contends he applied.  
15 Therefore, Plaintiff already has every application that Amtrak received for every Engineer  
16 positions at issue, including applicant names, job history and experience, and other identifying  
17 information.

18 10. As for applications that Plaintiff never made, Amtrak produced on March 7<sup>th</sup>  
19 interrogatory responses that detail virtually all of information that Plaintiff now seeks through this  
20 motion to compel. For example, in response to Plaintiff's INTERROGATORY NO. 7 (not at  
21 issue in this motion), Plaintiff asked Amtrak to state the total number of engineers hired in the  
22 Pacific Division by year between January 1998 to the present, to which Amtrak responded: "1999  
23 (first year for which the requested information is available): 16; 2000: 22; 2001: 10; 2002: 7;  
24 2003: 6; 2004 (last year for which the requested information is available): 16."

25 11. Plaintiff's motion essentially boils down to documents requests on every hire of  
26 every Conductor and Engineer over a nine-year for Amtrak's entire Pacific Division (which  
27 includes San Jose, Sacramento, and numerous other locations through the Pacific Northwest,  
28 extending as far South as San Luis Obispo, as far West as Grand Junction, Colorado and as far

1 Northeast as Minot, North Dakota) -- locations at which Plaintiff never worked and he admits he  
2 never wanted to work), including but not limited to applications, resumes, and offer letters -- all of  
3 which have absolutely nothing to do with the allegations in the First Amended Complaint and are  
4 confidential records protected by the California and United States constitutional rights of privacy.  
5 Thus, these requests are not only unduly burdensome and oppressive, they are also overbroad in  
6 scope and constitutionally protected.

7 12. Moreover, Plaintiff inappropriately attempts to discover this information for the  
8 last nine years even though Joe Deely, the Superintendent of the Pacific Division, had no say in  
9 hiring and promotions at any time and did not oversee the Pacific Division prior to November  
10 2002. *See e.g.* Follis Decl., Shelton Decl. and Deely Decl., which were attached to my original  
11 declaration filed April 10, 2007. Plaintiff contends that Deely influenced ever hire and  
12 promotion; however, Deely testified at his deposition, which I have reviewed, that he did not  
13 arrive to the Pacific Division until late 2002. Therefore, Plaintiff's attempt to discover  
14 information prior to November 2002 is improper.

15 **The Rest of Plaintiff's Motion Is Moot**

16 13. Plaintiff's document requests 18-21 and 29 are no longer before this Court because  
17 Amtrak has agreed to produce these documents, subject to the parties' protective order. For that  
18 reason, Amtrak does not address the factually and legally flawed points pertaining to Request  
19 Nos. 18-21 and 29, contained in pages 5:28--6:28 and 7:1-12 of Plaintiff's motion. The  
20 documents are projected to be produced to Plaintiff well before the hearing on May 1st.

21 14. In addition, Amtrak has agreed to produce select portions of Defendant Joe  
22 Deely's personnel file, to the extent such documentation, if any, exists, consistent with Judge  
23 LaPorte's ruling at the court hearing on April 17<sup>th</sup>, subject to the parties' protective order. With

24 //

25 //

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1 this agreement, Plaintiff's Request No. 17 is no longer at issue.

2 Executed this 17<sup>th</sup> day of April, 2007 in San Francisco, California. I declare under penalty  
3 of perjury under the laws of California and the United States of America that the foregoing is true  
4 and correct.

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6 CARA CHING-SENAHA

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## EXHIBIT A

PRICE AND ASSOCIATES  
A PROFESSIONAL LAW CORPORATION  
THE LATHAM SQUARE BUILDING  
1611 TELEGRAPH AVENUE, SUITE 1450  
OAKLAND, CA 94612  
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## FAX TRANSMISSION COVER SHEET

\*\*\*\*\*

DATE: March 30, 2007

TO: Kathy Maylin, Esq.  
Jackson, Lewis LLP  
199 Fremont Street, 10<sup>th</sup> Floor  
San Francisco, CA 94105

FAX NO: (415) 394-9401

PHONE NO: (415) 394-9400

FROM: PAMELA Y. PRICE, ESQ.

RE: Campbell v. National Railroad Passenger Corporation d/b/a Amtrak, et al.  
U.S. District Court Case No. C05-5434 MJJ (MEJ)

TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET: 2

TIME SENT: 12:25 p.m.

ENCLOSED: Letter from Pamela Y. Price dated March 30, 2007

IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION, PLEASE CONTACT  
US AT (510) 452-0292.

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March 30, 2007

## VIA FAX TRANSMISSION

Kathy Maylin, Esq.  
Jackson Lewis, LLP  
199 Fremont Street, 10<sup>th</sup> Floor  
San Francisco, CA 94105

Re: Campbell v. National Railroad Passenger Corporation d/b/a Amtrak, et al,  
U.S. District Court Case No. C05-5434 MJJ

Dear Ms. Maylin:

This letter will confirm that we have scheduled a telephone conference for Monday afternoon, April 2<sup>nd</sup>, to discuss the Defendant Amtrak's objections to Plaintiff's discovery. Our Motion to Compel is due no later than Tuesday, April 3, 2007.

As you may know, Judge Illston recently ordered the production of Defendant Deely's financial information in the *Howard* case, subject to a protective order. I propose that the information be produced in this case as well, thereby obviating the need for a motion to compel in this case. Judge Illston also ordered the production of employment records for the defendants and other Amtrak employees in the *Howard* case. In light of this ruling, I am hoping that you will reconsider your objections to our Request Nos. 17 through 21.

I am also interested in discussing your objections to Request Nos. 22 through 29 in hopes that we can resolve these issues without the necessity of a motion to compel.

With respect to the outstanding depositions, I wanted to determine if we could depose Ray Clark on April 6<sup>th</sup> in Modesto and Tim Sheridan in Portland on April 19<sup>th</sup>.

Thank you for your cooperation. Please call me if you have any questions or need additional information.

Very truly yours,

PRICE AND ASSOCIATES

  
PAMELA Y. PRICE

cc: John Campbell

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